

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GS HOLISTIC, LLC,

Plaintiff,

v.

MITCHELL & MITCHELL
ENTERPRISES, INC., et al.,

Defendants.

CASE NO. C23-5214JLR

ORDER

Before the court is Plaintiff GS Holistic, LLC's motion for leave to serve Defendant Rozalynn Fernandez by publication. (Mot. (Dkt. # 16).) Although the motion is noted for September 29, 2023 (*see* Dkt.), the court exercises its discretion under Federal Rule of Civil Procedure 1 to decide the motion before the noting date. Having reviewed the motion, the relevant portions of the record, and the governing law, the court DENIES GS Holistic's motion for leave to serve Ms. Fernandez by publication.

1 Federal Rule of Civil Procedure 4(e)(1) authorizes litigants in federal court to
2 effect service of a summons and complaint in any manner provided by the law of the state
3 in which the court sits. Fed. R. Civ. P 4(e)(1). Under Washington law, “constructive
4 service by publication is permissible when the plaintiff sets forth the following facts:
5 (1) that the defendant could not be found in Washington after a diligent search, (2) that
6 the defendant was a resident of Washington, and (3) that the defendant had either left the
7 state or concealed himself within it, with intent to defraud creditors or avoid service of
8 process.” *Pascua v. Heil*, 108 P.3d 1253, 1257 (Wash. Ct. App. 2005); *see also* RCW
9 4.28.100 (authorizing service by publication under certain circumstances, including
10 where the plaintiff, its agent, or its attorney (1) submits an affidavit stating that he or she
11 believes that the defendant “has departed [the state] with intent to defraud his or her
12 creditors, or to avoid the service of a summons, or keeps himself or herself concealed
13 therein with like intent” and (2) has mailed a copy of the summons and complaint to the
14 defendant at his or her place of residence); RCW 4.28.110 (setting forth the procedural
15 requirements to serve a defendant by publication). “Statutes authorizing service by
16 means other than personal service, i.e., constructive and substitute service, require strict
17 compliance.” *Pascua*, 108 P.3d at 1257.

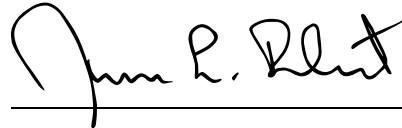
18 Here, GS Holistic has not filed an affidavit of an agent or attorney stating the
19 reasons he or she believes that Ms. Fernandez is avoiding service, nor has it mailed a
20 copy of the summons and complaint to Ms. Fernandez at her place of residence. (*See*
21 *Mot.*; *Dkt.*) Therefore, the court DENIES GS Holistic’s motion for leave to serve Ms.
22 Hernandez by publication (*Dkt.* # 16). GS Holistic may file a renewed motion for leave

1 to serve Ms. Fernandez by publication that satisfies the requirements of federal and
2 Washington law by no later than **September 18, 2023**. The court ORDERS counsel for
3 GS Holistic to carefully review RCW 4.28.100 and RCW 4.28.110 regarding service by
4 publication, before filing a renewed motion in this case and before filing motions for
5 leave to serve by publication in any of the other cases it has filed in this District.

6 The court once again observes that GS Holistic's motion does not satisfy the
7 requirements of Local Civil Rule 10, regarding formatting of motions. *See* Local Rules
8 W.D. Wash. LCR 10(e) (stating that all motions and other filings shall (1) include a page
9 number and the contact information for the law firm making the filing in the footer, (2)
10 include line numbers in the left margin, and (3) be dated and signed in accordance with
11 Local Civil Rule 11). The court has repeatedly warned GS Holistic that failure to comply
12 with the local rules will have consequences. (*See, e.g.,* 6/13/23 Order (Dkt. # 13) at 3 n.3
13 (ordering counsel for GS Holistic to "carefully review the court's local rules and to
14 ensure compliance with those rules in all future filings" or risk sanctions); *see also* Order,
15 *GS Holistic, LLC v. Supernova NW LLC*, No. C23-0326JLR (W.D. Wash. Aug. 8, 2023),
16 Dkt. # 12 (detailing the multiple ways GS Holistic's filing failed to comply with the local
17 rules and warning that failure to follow the rules in the future "may result in the filing
18 being stricken from the docket and/or other sanctions").) Despite these warnings,
19 however, GS Holistic continues to ignore the court's orders and violate its rules. As a
20 result, the court will deny with prejudice any future motion filed by GS Holistic that does
21 not comply with the local rules. *See* Local Rules W.D. Wash. LCR 11(c) (stating that an
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1 attorney or party who without just cause fails to comply with the local rules or an order of
2 the court may be subject to such sanctions as the court may deem appropriate).

3 Dated this 12th day of September, 2023.

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6 JAMES L. ROBART
7 United States District Judge
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